

**STANDING COMMITTEE ON
SCRUTINY OF BILLS AND
SUBORDINATE LEGISLATION**

REPORT NO. 14 of 1991

27 August 1991

**STANDING COMMITTEE FOR THE SCRUTINY OF BILLS AND
SUBORDINATE LEGISLATION**

MEMBERS OF THE COMMITTEE

Mrs E Grassby, MLA (Presiding Member)
Mr B. Collaery, MLA
Mr B Stefaniak, MLA

Secretary: Mr T Duncan
Legal Advisor: Emeritus Professor D Whalan

TERMS OF REFERENCE

- (1) a Standing Committee for scrutiny of bills and subordinate legislation shall be appointed;
- (2) the Committee shall with respect to any instrument of a legislative nature (including a regulation, rule or by-law) made under an Act consider whether the instrument –
 - (a) is in accord with the general objects of the Act under which it is made;
 - (b) unduly trespasses on rights previously established by law;
 - (c) makes rights, liberties and/or obligations unduly dependent upon non-reviewable decisions; and
 - (d) contains matter which in the opinion of the committee should properly be dealt with in an Act of the Legislative Assembly;
- (3) the Committee shall with respect to the clauses of bills introduced into the Legislative Assembly consider whether such bills –
 - (a) unduly trespass on personal rights and liberties;
 - (b) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
 - (c) make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions;
 - (d) inappropriately delegate legislative powers; or
 - (e) insufficiently subject the exercise of legislative power to parliamentary scrutiny;
- (4) the Committee shall consist of three members;
- (5) if the Assembly is not sitting when the Committee is ready to report on Bills and subordinate legislation, the Committee may send its report to the Speaker, or, in the absence of the Speaker, to the Deputy Speaker, who is authorised to give directions for its printing and circulation;
- (6) the majority of members constitutes a quorum of the Committee;
- (7) the Committee be provided with the necessary additional staff, facilities and resources; and
- (8) the foregoing provisions of the resolution, so far as they are inconsistent with the standing orders, have effect notwithstanding anything contained in the standing orders.

ROLE OF THE COMMITTEE

The Committee examines all Bills and delegated legislation presented to the Legislative Assembly. The Committee does not make any comments on the policy aspects of the legislation. The Terms of Reference contain the customary principles of scrutiny that enable the Committee to operate in the best traditions of totally non-partisan, non-political technical scrutiny of legislation that have been adopted, without exception, by all scrutiny committees in Australia. Such non-partisan, non-policy scrutiny allows the Committee to assist the Assembly passing into law Acts and delegated legislation that comply with the high ideals set out in the Terms of Reference.

Mr D Prowse
Speaker
Legislative Assembly
CANBERRA ACT 2601

Dear Mr Prowse

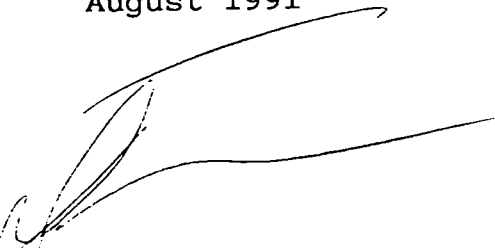
Please find enclosed a copy of Report No 14 of 1991 of the Standing Committee on Scrutiny of Bills and Subordinate Legislation. Under the resolution of appointment, the Committee is empowered to send a Report to you while the Assembly is not sitting so that it may be circulated to Members. Accordingly, I seek your approval to print and circulate Report No 14 of 1991.

Yours sincerely



Ellnor Grassby MLA
Presiding Member

August 1991



Approved
David Prowse

27 August 1991

SUBORDINATE LEGISLATION

The Committee has examined the following subordinate legislation and offers no comment:

ACT Determination No. 76 of 1991 made under section 44A of the Business Franchise (Tobacco and Petroleum Products) Act 1984 determines fees for petroleum product wholesalers and retailers and for tobacco wholesalers and retailers.

BILLS

(a) No Comment offered

The Committee has examined the following Bills and offers no comment:

Film Classification (Amendment) Bill 1991

This Bill will re-establish the pre-self-government system of exemptions of certain films by authorising the Attorney-General (or the Chief Censor if the Attorney-General delegates his or her power) to grant exemption where exemption has already been granted under the relevant New South Wales law.

Magistrates Court (Amendment) Bill 1991

This Bill amends the provisions relating to fees and charges that are payable under the principal Act.

Magistrates Court (Civil Jurisdiction) (Amendment) Bill 1991

This Bill amends the provisions relating to fees and charges that are payable under the principal Act.

Registration of Births, Deaths and Marriages (Amendment) Bill 1991

This Bill expands the circumstances in which a medical practitioner must notify the Coroner of a death and is consequential upon amendments to the Coroners Act 1956 and updates the references to lock-up and mental hospital.

Small Claims (Amendment) Bill 1991

This Bill provides for the Minister to determine filing fees and repeals the regulations under which the fees have been fixed in the past.

The Committee has examined the following Bills and offers the following comments.

(b) Strict Liability Offence

Associations Incorporation Bill 1991

This Bill repeals the existing provisions for incorporation of associations and provides for an up-to-date system for the incorporation of voluntary organizations.

The Committee makes two comments on the Bill.

The first relates to a vacancy on the office of public officer provided for in clause 64. Clause 64(3) provides that, if a vacancy occurs in the office of public officer,

"the committee of the association shall, within 14 days after the vacancy occurred appoint a person to fill the vacancy."

In passing, it is suggested that perhaps a comma would be appropriate after "occurred".

Clause 64(4) provides that

"If the committee does not comply with subsection (3) each member of the committee is guilty of an offence punishable, on conviction, by a fine not exceeding \$200". (Emphasis added)

This is a strict liability offence which each member of the committee commits. It is suggested that there could be circumstances where this could operate unfairly on a member or members of a committee. The following is a simple example.

Clause 64 (2) (b), (c) and (g) respectively provide that "the office of the public officer of an incorporated association shall be taken to be vacant" on resignation or death (not surprisingly!) or ceasing to reside in the Territory.

Suppose one member of a committee of many members is on business overseas for four weeks and, unknown to him or her, the public officer resigns, dies or shifts from a flat in Canberra to one in Queanbeyan the day after the committee member leaves for overseas, the rest of the committee do nothing about filling the office. On the expiration of 14 days all members of the committee, including the totally innocent overseas member, have committed an offence, for which there is no defence of reasonable excuse or lack of knowledge.

It seems unreasonable that the innocent absentee, who is a member of a committee of many members of an incorporated society, which, by definition, must not "trade or secure pecuniary gain for its members" (clause 108 (1)) should have committed an offence to which there is no defence. The only thing that he or she can do is speak very firmly to his or her fellow committee members on return from overseas!

The second point is a very tiny and unimportant one. In clause 121(1)(a) one alternative for service of a document is "sending it by prepaid post". In clause 121(1)(c) one alternative for service is "by sending it by post". Was a difference intended?

(c) Application for building permit in writing

Building (Amendment) Bill (No. 2) 1991

This Bill provides that the existing Building Manual is to be replaced by a Building Code which will comprise parts or all of the Building Code of Australia together with a special ACT Appendix.

Section 35 of the principal Act provides for the making and granting of applications for building permits. Section 35(2) of the principal Act at present provides as follows:

"(2) An application under this section for a building permit shall -

(a) be made by a person who holds a builder's licence that authorises him to carry out building work of the kind involved in the approved plans and specifications;

(b) be in accordance with the prescribed form, and

(c) be accompanied by the determined fee."

There are two amendments to this section provided for in the Schedule to the Bill. First, section 35(2)(b) above is amended by removing the words "In accordance with the prescribed form" and substituting "in writing". This means that there would be a requirement that the application be in written form. However, secondly, the Schedule then omits section 35(2)(b) and (c) and substitutes the phrase "and (b) be accompanied by the determined fee."

The combination of these two amendments seems to remove the requirement that an application for a building permit must be in writing. If there is no provision elsewhere in the Act that requires writing, was this result intended?

In passing, it is suggested that, if the sexist "him" in S.35(2)(a) has not already been changed, the Committee suggests that the opportunity be taken to tidy this up.



Mrs E. Grassby
Presiding Member